

The only issue on this appeal is whether claimant has established the proposed medical treatment is related to his August 2, 2004, accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed.

Claimant commenced working for respondent in May or June 2004. There is no dispute that claimant sustained an accident at work on August 2, 2004, when he slipped in water and did the splits while holding a heavy part. There is also no dispute that before the August 2004 accident claimant had a rather extensive history of low back problems, which included surgery. Furthermore, there is no dispute that additional low back surgery is now recommended.

Notwithstanding claimant's chronic low back problems, Judge Barnes determined claimant injured or aggravated his low back in the August 2004 accident, which contributed to his present need for surgery. This Board Member agrees.

Claimant has a history of experiencing several low back injuries. And in April 1996, Dr. Paul S. Stein operated on claimant's low back and performed a left partial discectomy at the L3-L4 intervertebral level. Dr. Stein's notes indicate that he treated claimant through August 14, 1996, but claimant's symptoms did not resolve. In 1998, claimant again injured his low back in an automobile accident and began treating with Dr. Jerry Old at the Ark City Clinic. According to Dr. Stein, the notes from the Ark City Clinic indicate that claimant received medical treatment from that facility through June 13, 2003, when he was taking up to six Lortab per day.

Despite claimant's past low back problems, he passed his pre-employment physical before commencing his employment with respondent. Claimant also testified that when he began working for respondent he did not have any low back symptoms and that he did not have any problems performing his job until his August 2004 accident. According to claimant, that accident caused pain in his groin and in his low back. Moreover, claimant also experienced left arm and shoulder pain following the accident and has since undergone shoulder and carpal tunnel release surgeries.

Claimant's low back pain has worsened since the August 2004 accident and he experiences severe low back pain that extends around to the left anterior thigh. Dr. Stein, who saw claimant in February 2006 at the Judge's request, believes those symptoms are related to lumbar stenosis and the doctor now believes surgery may be appropriate. The doctor, however, also believes claimant's preexisting back condition plays a significant role in his needing surgery. Dr. Stein wrote to respondent and its insurance carrier's attorney and stated:

I am replying to your letter of 7/19/06 regarding causation of the current need for back surgery. In addition, you asked about when Mr. Watson's symptoms changed from his hip to his back. At the time he presented to me on 2/15/06, Mr. Watson was reporting pain in both the back and hip. The question is whether some of the hip pain is coming from the lower back. That is possible and I don't know of any further testing to make that determination. In regard to causation, the underlying structural pathology is a natural and expected consequence of his 1996 disc herniation and surgery. This was symptomatic before the fall, but Mr. Watson states that this increased the pain. There is no way I can determine the accuracy of this. What I can state is that there is no objective evidence to document a significant change from this recent work incident. Trying to take all factors into account, it is my opinion, on a medical basis and within a reasonable degree of medical probability, that the majority of the need for current surgery is preexisting.¹

This is a very close case. Judge Barnes, who had the opportunity to observe claimant testify, believed claimant's testimony that his low back symptoms worsened as a result of the August 2004 accident. At this juncture, the undersigned gives some deference to the Judge's conclusion and finds that the August 2004 accident aggravated and intensified claimant's low back condition. Accordingly, claimant is entitled to receive the medical treatment that Dr. Stein now finds appropriate. Consequently, the preliminary hearing Order should be affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.² Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned affirms the August 29, 2006, Order entered by Judge Barnes.

IT IS SO ORDERED.

¹ P.H. Trans., Cl. Ex. 1.

² K.S.A. 44-534a.

Dated this ____ day of October, 2006.

BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant
Samantha N. Benjamin, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge